

RECORDATION NO. 11064-A
NOV 20 1979-9 20 AM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11064
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INTERSTATE COMMERCE COMMISSION
CRAVATH, SCAMMAY & MOORE
ONE CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

RECORDATION NO. 11064-B
NOV 20 1979-9 20 AM
INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DEKOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HROSTAK

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JAMES M. EDWARDS
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DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN

212 HANOVER 2-3000

TELEX
RCA 233663
WUD 125547
WUI 620976

No. 9-324A011

Date NOV 20 1979

Fee \$ 160.00

ICC Washington, D. C.

November 15, 1979

Richmond, Fredericksburg and Potomac Railroad Company
Lease Financing Dated as of September 1, 1979
9-5/8% Conditional Sale Indebtedness Due April 1, 1995

[CS&M Ref: 4650-046]

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Richmond, Fredericksburg and Potomac Railroad Company, for filing and recordation, counterparts of the following:

FMC Corporation and

(1)(a) Conditional Sale Agreement dated as of September 1, 1979, between Richmond, Fredericksburg and Potomac Railroad Company;

(b) Agreement and Assignment dated as of September 1, 1979, between FMC Corporation and United States Trust Company of New York;

(2) Equipment Lease dated as of September 1, 1979, between Richmond, Fredericksburg and Potomac Railroad Company and McHugh Brothers Crane Rentals, Inc.;

(3) Equipment Sublease dated as of November 1, 1979, between McHugh Brothers Crane Rentals, Inc. and New Hope and Ivyland Railroad Company; and

NEXT PAGE for next document
OVER ↓

COUNSEL
CARLYLE E. MAW
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER
ROSWELL L. GILPATRICK
L. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON
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75008 PARIS, FRANCE
TELEPHONE: 285-81-54
TELEX: 290530
33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901
CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

Counterpart

James Cumber

A
B
C

D - (4) Assignment and Assumption Agreement dated as of November 15, 1979, between New Hope and Ivyland Railroad Company and McHugh Brothers Heavy Hauling, Inc.

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

Richmond, Fredericksburg and Potomac
Railroad Company,
P.O. Box 11281,
Richmond, Virginia 23230.

Manufacturer:

FMC Corporation,
200 East Randolph Drive,
Chicago, Illinois 60601.

Lessee:

McHugh Brothers Crane Rentals, Inc.,
P.O. Box 196,
Penndel, Pennsylvania 19407.

Agent-Assignee:

United States Trust Company of New York,
130 John Street (4th Floor),
New York, N.Y. 10038

Sublessee:

New Hope and Ivyland Railroad Company,
P.O. Box 196,
Penndel, Pennsylvania 19047.

Assignee of Sublessee:

McHugh Brothers Heavy Hauling, Inc.,
P.O. Box 196,
Penndel, Pennsylvania 19047.

Cross INDEX → Please file and record the documents referred to in this letter and cross-index them under the names of the Lessor-Vendee, the Manufacturer, the Lessee, the Agent-Assignee, the Sublessee and the Assignee of Sublessee.

Please cross index under ~~MC~~ ^H HUGH BROTHERS HEAVY HAULING, INC.
The equipment covered by the aforementioned agreements consists of 300 50 Ft. XM and XF boxcars, bearing the reporting numbers NHIR 5001-5300, inclusive.

Please note that the rentals under the Lease, the Sublease and the Assignment and Assumption Agreement have been assigned to United States Trust Company of New York, as Agent-Assignee, pursuant to the terms of the Lease, the Sublease and the Assignment and Assumption Agreement and the respective Notices of Assignment attached thereto.

Enclosed is our check for \$160 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

*including \$10.00 to
cover cross indexing requested above*

John B. Harlow, II

John B. Harlow, II,
as Agent for Richmond,
Fredericksburg and Potomac
Railroad Company

Ms. Agatha Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

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RECORDATION NO. 11064-A
7V 20 1979-9 20 AM
INTERSTATE COMMERCE COMMISSION

[CS&M Ref.: 4650-046]

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1979

Between

FMC CORPORATION

Manufacturer

and

UNITED STATES TRUST COMPANY OF NEW YORK

Agent and Assignee

AGREEMENT AND ASSIGNMENT dated as of September 1, 1979 (this "Assignment"), between FMC CORPORATION (the "Manufacturer") and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Agent and Assignee under a Participation Agreement dated as of September 1, 1979 (the "Participation Agreement"), said Bank as so acting, together with its successors and assigns, being hereinafter called the "Assignee".

WHEREAS the Manufacturer and Richmond, Fredericksburg and Potomac Railroad Company (the "Vendee") have entered into a Conditional Sale Agreement dated as of September 1, 1979 (the "CSA"), covering the sale on the conditions therein set forth by the Manufacturer and the purchase by the Vendee of the railroad rolling stock described in Schedule A to the CSA (collectively the "Equipment" and individually an "Item" or "Item of Equipment"); and

WHEREAS the Vendee and McHugh Brothers Crane Rentals, Inc. (the "Lessee"), have entered into an Equipment Lease dated as of September 1, 1979 (the "Lease"), providing for the lease of the Equipment to the Lessee; and

WHEREAS the Lessee and New Hope & Ivyland Railroad Company (the "Sublessee") have entered into an Equipment Sublease dated as of November 1, 1979, providing for the lease of the Equipment to the Sublessee;

NOW, THEREFORE, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Assignment by Manufacturer. Effective as of and upon the payment by the Assignee of the amount payable pursuant to Section 5 hereof in respect of an Item of Equipment, as to such Item, the Manufacturer hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, security title and interest of the Manufacturer in and to such Item of Equipment;

(b) in respect of such Item of Equipment, all the right, title and interest of the Manufacturer in and to the CSA (except the right and obligation to construct and deliver such Item and the right to receive the payments specified in paragraph (a) of Section 3.3 thereof and reimbursement for taxes paid or incurred by the Manufacturer) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the CSA on account of the CSA Indebtedness (as defined in the CSA) and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited above in subparagraph (b) hereof, all of the Manufacturer's rights, powers, privileges and remedies under the CSA in respect of such Item;

without any recourse, however, against the Manufacturer for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the CSA or with respect to its warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking) of the CSA or relieve the Vendee from its obligations to the Manufacturer under Sections 2, 3.3(a), 10 and 12 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12 of the CSA, all obligations of the Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on their parts to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee (it being understood that such agreement with respect to the expense and liability of enforcement shall in no event be construed as a waiver of the Assignee's

rights with respect thereto under Section 14 of the CSA and Section 14.2 of the Lease (as defined in the CSA)).

SECTION 2. Agreements of Manufacturer. The Manufacturer agrees that it will construct and deliver the various Items of Equipment to the Vendee, in accordance with the provisions of the CSA, and that it will perform and fully comply with each and all of the covenants and conditions of the CSA set forth to be performed and complied with by the Manufacturer. The Manufacturer further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to the Vendee under the CSA it will have legal title to such Item and good and lawful right to sell such Item and the title to such Item will be free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Vendee; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder and the Lessee under the Lease.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the CSA, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 12.4 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action, and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion

or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Lessee against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the CSA shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs, systems, processes, formulas or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Vendee and the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of the Equipment, or any Item thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such claim.

The Manufacturer agrees that any amount payable to it by the Vendee or the Lessee, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of Equipment.

SECTION 3. Equipment Markings. The Manufacturer will cause the Equipment to be marked as provided in Section 5 of the CSA prior to the delivery thereof.

SECTION 4. Recordation. Upon request of the Assignee and payment by the Assignee of the amount payable pursuant to Section 5 hereof in respect of any Item of Equipment, as to such Item, the Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Manufacturer therein or in such Item of Equipment.

SECTION 5. Conditions Precedent to Payments by Assignee. Subject to the conditions set forth in the Participation Agreement, the Assignee, on or before noon on each Closing Date fixed as provided in Section 3.4 of the CSA with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer by wire transfer of immediately available funds pursuant to the instructions set forth in the invoice, an amount equal to 100% of the aggregate Purchase Price for all Items of Equipment in such Group for which settlement is then being made, provided that the obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the prior timely receipt by the Assignee, pursuant to the Participation Agreement, of all the funds to be furnished to the Assignee by the various parties to the Participation Agreement with respect thereto and evidence reasonably satisfactory to it and its counsel that each of the conditions precedent set forth in the Participation Agreement have been met. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the CSA pursuant to Section 2.3 thereof.

SECTION 6. Further Assignments. Subject to the terms and provisions of the Participation Agreement, the Assignee may assign all or any of its rights, under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. Representation of Manufacturer; Further Assurances. The Manufacturer hereby:

(a) represents and warrants to the Assignee and the Investors (as defined in the Participation Agreement) that the CSA was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to conform the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

SECTION 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee and the Lessee and the Sublessee. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be

affixed and duly attested, all as of the day, month and year first above written.



[CORPORATE SEAL]

Attest:

Joseph W. Gilbert
ASST. Secretary

FMC CORPORATION,

by

John B. Canouse Jr.
Its Division Manager

UNITED STATES TRUST COMPANY OF
NEW YORK,

by

[CORPORATE SEAL]

Its Assistant Vice President

Attest:

Assistant Secretary

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of September 1, 1979.

RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY,


by

Vice President

STATE OF ~~ILLINOIS~~)
~~ILLINOIS~~) ss.:
 COUNTY OF ~~COOK~~,)

On this 13th day of November 1979, before me personally appeared JOHN E. CARROLL, JR. to me personally known, who, being by me duly sworn, says that he is

DIVISION MANAGER of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


 Notary Public

[Notarial Seal]

My Commission Expires: MAY 16, 1983

STATE OF NEW YORK,)
) ss.:
 COUNTY OF NEW YORK,)

On this day of November 1979, before me personally appeared to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

 Notary Public

[Notarial Seal]

[CS&M Ref.: 4650-046]

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1979

Between

FMC CORPORATION

Manufacturer

and

UNITED STATES TRUST COMPANY OF NEW YORK

Agent and Assignee

AGREEMENT AND ASSIGNMENT dated as of September 1, 1979 (this "Assignment"), between FMC CORPORATION (the "Manufacturer") and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Agent and Assignee under a Participation Agreement dated as of September 1, 1979 (the "Participation Agreement"), said Bank as so acting, together with its successors and assigns, being hereinafter called the "Assignee".

WHEREAS the Manufacturer and Richmond, Fredericksburg and Potomac Railroad Company (the "Vendee") have entered into a Conditional Sale Agreement dated as of September 1, 1979 (the "CSA"), covering the sale on the conditions therein set forth by the Manufacturer and the purchase by the Vendee of the railroad rolling stock described in Schedule A to the CSA (collectively the "Equipment" and individually an "Item" or "Item of Equipment"); and

WHEREAS the Vendee and McHugh Brothers Crane Rentals, Inc. (the "Lessee"), have entered into an Equipment Lease dated as of September 1, 1979 (the "Lease"), providing for the lease of the Equipment to the Lessee; and

WHEREAS the Lessee and New Hope & Ivyland Railroad Company (the "Sublessee") have entered into an Equipment Sublease dated as of November 1, 1979, providing for the lease of the Equipment to the Sublessee;

NOW, THEREFORE, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Assignment by Manufacturer. Effective as of and upon the payment by the Assignee of the amount payable pursuant to Section 5 hereof in respect of an Item of Equipment, as to such Item, the Manufacturer hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, security title and interest of the Manufacturer in and to such Item of Equipment;

(b) in respect of such Item of Equipment, all the right, title and interest of the Manufacturer in and to the CSA (except the right and obligation to construct and deliver such Item and the right to receive the payments specified in paragraph (a) of Section 3.3 thereof and reimbursement for taxes paid or incurred by the Manufacturer) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the CSA on account of the CSA Indebtedness (as defined in the CSA) and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited above in subparagraph (b) hereof, all of the Manufacturer's rights, powers, privileges and remedies under the CSA in respect of such Item;

without any recourse, however, against the Manufacturer for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the CSA or with respect to its warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking) of the CSA or relieve the Vendee from its obligations to the Manufacturer under Sections 2, 3.3(a), 10 and 12 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12 of the CSA, all obligations of the Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on their parts to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee (it being understood that such agreement with respect to the expense and liability of enforcement shall in no event be construed as a waiver of the Assignee's

rights with respect thereto under Section 14 of the CSA and Section 14.2 of the Lease (as defined in the CSA)).

SECTION 2. Agreements of Manufacturer. The Manufacturer agrees that it will construct and deliver the various Items of Equipment to the Vendee, in accordance with the provisions of the CSA, and that it will perform and fully comply with each and all of the covenants and conditions of the CSA set forth to be performed and complied with by the Manufacturer. The Manufacturer further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to the Vendee under the CSA it will have legal title to such Item and good and lawful right to sell such Item and the title to such Item will be free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Vendee; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder and the Lessee under the Lease.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the CSA, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 12.4 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action, and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion

or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Lessee against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the CSA shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs, systems, processes, formulas or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Vendee and the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of the Equipment, or any Item thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such claim.

The Manufacturer agrees that any amount payable to it by the Vendee or the Lessee, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of Equipment.

SECTION 3. Equipment Markings. The Manufacturer will cause the Equipment to be marked as provided in Section 5 of the CSA prior to the delivery thereof.

SECTION 4. Recordation. Upon request of the Assignee and payment by the Assignee of the amount payable pursuant to Section 5 hereof in respect of any Item of Equipment, as to such Item, the Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Manufacturer therein or in such Item of Equipment.

SECTION 5. Conditions Precedent to Payments by Assignee. Subject to the conditions set forth in the Participation Agreement, the Assignee, on or before noon on each Closing Date fixed as provided in Section 3.4 of the CSA with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer by wire transfer of immediately available funds pursuant to the instructions set forth in the invoice, an amount equal to 100% of the aggregate Purchase Price for all Items of Equipment in such Group for which settlement is then being made, provided that the obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the prior timely receipt by the Assignee, pursuant to the Participation Agreement, of all the funds to be furnished to the Assignee by the various parties to the Participation Agreement with respect thereto and evidence reasonably satisfactory to it and its counsel that each of the conditions precedent set forth in the Participation Agreement have been met. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the CSA pursuant to Section 2.3 thereof.

SECTION 6. Further Assignments. Subject to the terms and provisions of the Participation Agreement, the Assignee may assign all or any of its rights, under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. Representation of Manufacturer; Further Assurances. The Manufacturer hereby:

(a) represents and warrants to the Assignee and the Investors (as defined in the Participation Agreement) that the CSA was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) agrees that it will from time to time and at all times, at the request of the Assignee make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to conform the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

SECTION 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee and the Lessee and the Sublessee. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be

affixed and duly attested, all as of the day, month and year first above written.

FMC CORPORATION,

by _____

[CORPORATE SEAL]

Its _____

Attest:

Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK,

by *Bauer*

[CORPORATE SEAL]

Its Assistant Vice President

Attest:

Stephen J. Kala
Assistant Secretary

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of September 1, 1979.

RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY,

by _____

Vice President

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of November 1979, before me
personally appeared to me personally
known, who, being by me duly sworn, says that he is

of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires:

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 14 day of November 1979, before me personally appeared G. BOSWELL, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Federico P. Santos
Notary Public

[Notarial Seal]

FEDERICO C. SANTOS
Notary Public, State of New York
No. 41-4691650
Qualified in Queens County
Commission Expires March 30, 1981